

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-113886-19

Date:
September 18, 2019

LEGEND:

Company =

State =

Year 1 =

Year 2 =

A =

Dear :

This letter responds to a letter dated April 12, 2019, and subsequent correspondence, submitted on behalf of Company by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to file an election under § 754 of the Internal Revenue Code (the Code).

Facts

According to the information submitted and representations within, Company is a State company that was formed in Year 1 and is classified as a partnership for federal tax purposes. During Year 2, A, who owned an interest in Company, retired and received a distribution of property from Company in exchange for his interest in Company. Company intended to file an election under § 754 to adjust the basis of partnership property with its return for its taxable year ending in Year 2. However, Company inadvertently failed to file a timely election under § 754 for Year 2.

Company represents that it will file amended returns for Year 2 and subsequent years consistent with the election having been made. Further, Company represents that it has

acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making the election.

Law and Analysis

Section 754 provides that if a partnership files an election, in accordance with the regulations prescribed by the Secretary, the basis of partnership property is adjusted, in the case of a distribution of property, in the manner provided in § 734, and, in the case of a transfer of a partnership interest, in the manner provided in § 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which the election was filed and all subsequent taxable years.

Section 1.754-1(b)(1) of the Income Tax Regulations provides that an election under § 754 to adjust the basis of partnership property under §§ 734(b) and 743(b), with respect to a distribution of property to a partner or a transfer of an interest in a partnership, shall be made in a written statement filed with the partnership return for the taxable year during which the distribution or transfer occurs. For the election to be valid, the return must be filed not later than the time prescribed by § 1.6031(a)-1(e) (including extensions thereof) for filing the return for the taxable year.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but not more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

Conclusion

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Company is granted an extension of time of 120 days from the date of this letter

to make an election under § 754 effective for its Year 2 taxable year and thereafter. The election should be made in a written statement filed with the appropriate service center for association with Company's Year 2 return. A copy of this letter should be attached to the statement filed. A copy is enclosed for that purpose.

This ruling is contingent on Company adjusting the basis of its properties to reflect any § 734(b) or § 743(b) adjustments that would have been made if the § 754 election had been timely made. These basis adjustments must reflect any additional depreciation that would have been allowable if the § 754 election had been timely made, regardless of whether the statutory period of limitation on assessment or filing a claim for refund has expired for any year subject to this grant of late relief. Any depreciation deduction allowable for an open year is to be computed based upon the remaining useful life and using property basis as adjusted by the greater of any depreciation deduction allowed or allowable in any prior year had the § 754 election been timely made. Additionally, the partners of Company must adjust the basis of their interests in Company to reflect what that basis would be if the § 754 election had been timely made, regardless of whether the statutory period of limitation on assessment or filing a claim for refund has expired for any year subject to this grant of late relief. Specifically, the partners of Company must reduce the basis of their interests in Company in the amount of any additional depreciation that would have been allowable if the § 754 election had been timely made.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any facts discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning whether Company is a partnership for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Company's authorized representatives.

Sincerely,
Laura C. Fields
Laura C. Fields
Senior Technician Reviewer, Branch 1
(Passthroughs & Special Industries)

Enclosures (2):
Copy of this letter
Copy for 6110 purposes

cc: